

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IRA KLEIN,
Petitioner,

VS.

RODNEY CHANDLER, Warden,
FCI-Fort Worth,
Respondent.

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CIVIL ACTION NO.4:13-CV-372-Y

ORDER ADOPTING
MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner Ira Klein under 28 U.S.C. § 2241, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on May 8, 2013; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on May 21, 2013.

The Court, after **de novo** review, concludes that the Petitioner's objections must be overruled, and the petition for writ of habeas corpus under 28 U.S.C. § 2241 should be dismissed, for the reasons stated in the magistrate judge's findings and conclusions and as set forth herein.

As noted by the magistrate judge, in this action, Ira Klein does not challenge the fact or duration of his confinement, but instead complains that he is being subjected to a deprivation of his serious medical needs in violation of his rights under the Eighth Amendment. (§ 2241 Petition at 8-19.) Thus, his claims are

outside the scope of a § 2241 petition.¹ As the United States Court of Appeals for the Fifth Circuit recently reiterated in noting that a federal prisoner's challenges to the conditions of her confinement should be raised in an action under *Bivens v. Six Unknown Named Agents*,² "[a]llegations that challenge the fact or duration of confinement are properly brought in habeas petitions, while allegations that challenge rules, customs, and procedures affecting conditions of confinement are properly brought in civil rights actions."³ For this additional reasons, Klein's objections are overruled.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

Ira Klein's petition for writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED without prejudice to Klein's right to assert such claims in a civil-rights action.

SIGNED June 11, 2013.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹See *Pierre v. United States*, 525 F.2d 933, 935 (5th Cir. 1976) ("Simply stated, habeas is not available to review questions unrelated to the cause of detention").

²403 U.S. 388 (1971).

³*Schipke v. Van Buren*, 239 Fed. Appx. 85, 85-86 (5th Cir. Aug. 30, 2007).